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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Accountancy
Virginia Administrative Code (VAC) citation	18 VAC 5 -21
Regulation title	Board of Accountancy Regulations
Action title	Fee for Administration of Computer-Based CPA Examination
Date this document prepared	January 5, 2006

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

On July 26, 2005, the Board of Accountancy approved by unanimous vote to take over the administration of the computer-based CPA examination, or “CBT”, from the current vendor—CPA Examination Services Inc. (CPAES)—to more efficiently and effectively administer the CPA examination for its Virginia candidates, the net effect of which is to reduce the cost of the CBT for Virginia candidates.

Currently, Virginia exam candidates pay \$160 to CPAES for their initial exam application, and they pay CPAES a fee ranging from \$60 to \$105 to CPAES for their re-exam application. In the first year of the CBT, CPAES collected a total of \$591,210 from Virginia exam candidates. This included fees from initial examination candidates (which totaled \$256,770) and from re-examination candidates (which totaled \$334,440).

With this proposal, the Board will decrease the fee charged to initial exam candidates to \$120 and repeal entirely the fee charged to re-exam candidates. So, in this same period, the total real savings passed directly to Virginia exam candidates under the Board's proposal would have been **\$362,970**.

Section 2.2-4011 of the Code of Virginia (the Administrative Process Act) states that emergency regulations are those that an agency finds are necessitated by an "emergency situation." One definition of such a situation is one in which "Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment."

Section 54.1-4409 of the Code of Virginia states that the Board "shall issue a CPA certificate only to a person who meets the character, education, experience, continuing professional education (CPE), and CPA exam requirements established in this chapter and by regulations of the Board." Before an applicant for a CPA certificate may sit for the CPA exam, that applicant must meet the prescribed education requirements in the Code and regulations of the Board.

Further, Section 54.1-4403 of the Code states that the Board shall have the power and duty to establish the "qualifications of applicants for licensure, provided that all qualifications shall be necessary to ensure competence and integrity;" examine the "qualifications of each applicant for licensure, including the preparation, administration and grading of examinations;" promulgate regulations "in accordance with the Administrative Process Act ... necessary to assure continued competency, ... and to effectively administer the regulatory system;" and levy and collect fees for licensure that are "sufficient to cover all expenses for the administration and operation of the Board."

Since the Board is required by statute to issue licenses only to those applicants who are qualified individuals—one requirement for licensure being the CPA exam—the Board must have appropriate fees "that are sufficient" to cover the expenses for administering the CBT. Therefore, to meet its statutory obligation, it is essential that the Board's exam administration fee take effect no later than 280 days from its effective date. Since the administration of the CBT reverts to the Board in August 2006, the fee must be in effect no later than August 14, 2006.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

As required by Executive Order 21 (2002), the Board has been given the legal authority to promulgate the contemplated amendments to its regulations through Chapter 44 of Title 54.1 of the Code of Virginia, 1950, as amended. The Board has that legal authority in Sections 54.1-4403 (1), (2), (3) and (4), and 54.1-4409 (A). During its meeting on January 9, 2006, the Board unanimously approved the enactment of the examination administration fee of \$120, and the promulgation of this action as an emergency regulation/notice of intended regulatory action. The Board received a memorandum dated January 11, 2006 from the Office of the Attorney General stating that the Board has the authority to promulgate these emergency regulations.

These proposed emergency regulations are not otherwise exempt under the provisions of Section 2.2-4006 (A) (4).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The most recent national statistics available about CPA candidate information for the CBT from April 5, 2004 to February 28, 2005 from the National Association of State Boards of Accountancy, Inc. (NASBA)—the parent company of CPAES—show that Virginia ranks 5th in the number of candidates tested in the United States, behind only California, New York, Texas, and Illinois. Between April 5, 2004 to May 12, 2005, 2,744 Virginia candidates were tested. In the April 2004 to February 2005 timeframe, 10,683 Notices to Schedule (NTS)—a notice sent to candidates who have been approved to schedule a single part or multiple parts of the CPA exam—were sent to Virginia candidates. (Due to the ability of a candidate to register for single or multiple parts individually, the number of Notices to Schedule would be higher than the number of candidates.)

The Board's current contract with CPAES will expire in August 2006, at which time the Board would have to submit to a request for proposals (RFP) in order to obtain a new vendor to administer the CBT for the Board.

The Board performed an extensive review of this matter, which included a review of the costs involved for the candidates—both initial examination candidates and re-examination candidates—and the costs involved for the Board—in terms of staff time and expense. The Board determined that the Board staff currently handles many of the non-routine CPA examination issues and problems, which includes reviewing some of the same information presently reviewed by the CPAES Exam Coordinator. The Board then reviewed the fees collected from all candidates—initial CPA exam candidates and re-examination candidates by CPAES, in comparison with what the Board would have charged during the same period.

During the first year of the CBT, CPAES collected a total of \$591,210 from Virginia examination candidates. This included fees from initial examination candidates (which totaled \$256,770) and from re-examination candidates (which totaled \$334,440). During the same period, the Board projected that it would have collected a total of \$228,240 from initial examination candidates based upon an examination administration fee of \$120. The Board would have collected no fees from re-examination candidates.

Over this same period, the total real savings projected to be passed directly onto the examination candidates under the Board's administration of the CBT would be **\$362,970**.

With the Board assuming the administration of the CBT, this proposed revised fee schedule of \$120 for initial candidates and \$0 for re-examination candidates would entail a revenue increase to the Board of \$180,690. This amount would address the anticipated increase in personnel costs of approximately \$150,000, as well as the initial one-time costs—furniture and IT—of approximately \$13,000 to administer the examination in-house.

To eliminate the "middleman," the Board agreed to assume administration of the CBT in August 2006 its contract with CPAES expires. The savings would be passed directly to the Virginia candidates, which would be found in changing the fee structure collected by the Board to a single fee for examination administration.

The benefits of the Board assumption of CBT administration, as well as the revised examination administration fee, would include (1) the elimination of any "middleman" between the candidate and the

Board, (2) the use of online interactive applications for examination application and reception of transcripts from Virginia colleges and universities (continuing the Board's focus on the use of IT to make the process of licensure and, in this case, examination application, more efficient and effective), and (3) the provision of continual excellent customer service through a "one-stop shop" for CPA examination candidates.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Section 2.2-4011 of the Code of Virginia (the Administrative Process Act) states that emergency regulations are those that an agency finds are necessitated by an "emergency situation." One definition of such a situation is one in which "Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment."

Section 54.1-4409 of the Code of Virginia states that the Board "shall issue a CPA certificate only to a person who meets the character, education, experience, continuing professional education (CPE), and CPA exam requirements established in this chapter and by regulations of the Board." Before an applicant for a CPA certificate may sit for the CPA exam, that applicant must meet the prescribed education requirements in the Code and regulations of the Board.

Further, Section 54.1-4403 of the Code states that the Board shall have the power and duty to establish the "qualifications of applicants for licensure, provided that all qualifications shall be necessary to ensure competence and integrity;" examine the "qualifications of each applicant for licensure, including the preparation, administration and grading of examinations;" promulgate regulations "in accordance with the Administrative Process Act ... necessary to assure continued competency, ... and to effectively administer the regulatory system;" and levy and collect fees for licensure that are "sufficient to cover all expenses for the administration and operation of the Board."

Since the Board is required by statute to issue licenses only to those applicants who are qualified individuals—one requirement for licensure being the CPA examination—the Board must have the appropriate fees "that are sufficient" to cover the expenses for administering the CBT. Therefore, to meet its statutory obligation, it is essential that the Board's examination administration fee take effect no later than 280 days from its effective date. Since the administration of the CBT reverts to the Board in August 2006, the fee must be in effect no later than August 14, 2006.

If this fee change fails to be promulgated, then (i) the Board will not be able to effectively and efficiently administer the CBT; (ii) applicants for a CPA license in Virginia will not be able to take the CBT; and (iii) the Board will not have sufficient funds to cover its operating expenses. To cover such expenses, as will be explained in detail below, the Board has determined that it must replace the current initial CPA exam application fee of \$25 with an examination administration fee of \$120. (The initial exam application fee for Virginia candidates is currently \$160—\$135 for CPAES and \$25 for the Board. This fee change represents a reduction in the total cost to candidates—from \$160 to \$120 for initial applicants, and from fees ranging from \$60 to \$105—for CPAES—to \$0 for re-exam candidates.)

The practice of public accountancy is a profession that, according to Section 54.1-100, "requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional ... ability." The "potential for harm is recognizable and not remote," as witnessed by recent well-publicized instances of alleged fraudulent accounting and financial reporting by certain large companies and, in at least certain of these cases, the apparent failure of the audit firm to prevent the

fraudulent accounting or financial reporting. Therefore, it is necessary for the Board to promulgate this emergency regulation in accordance with the APA to “effectively administer the regulatory system,” of which a key part concerns the “qualifications of applicants for licensure” that includes administering the CBT.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 5-21-20		The current section lists all fees for the Board.	<p>Amendment: In this section, the first change is to amend the “Initial CPA exam application fee” to “Examination administration fee” and the fee itself from “\$25” to “\$120”. The second change is to clarify that the examination administration fee will be assessed only for initial application to the exam and not for re-examination candidates; furthermore, should the Board contract for examination administration services, such contracts “shall not include a fee for those services that exceeds \$200.”</p> <p>Consequences: Unless enacted, the administration fee established for the initial application for the CPA exam will not be clarified for candidates preparing to take the exam, which will create unnecessary confusion about the process. Further, unless enacted, fee collections will not be accurately aligned with the costs of the work performed by the Board members and staff. If the fee is not adjusted, then the fees from Virginia regulants (CPAs and CPA firms) will have to be raised to cover the administrative costs for the exam, or the Board will not be able to adequately perform its oversight role.</p> <p>Essential Nature: Current regulations provide for a \$25 initial CPA exam fee to cover the costs of work performed by the Board members and staff. It is important that with the Board assuming the administration of the CPA exam, each exam candidate understand that the only fee paid to the Board will cover only the initial application for the exam, not the re-examination fee, and that should the Board contract for</p>

			<p>examination administration services through the Virginia Public Procurement Act (VPPA), that the contract shall not include a fee for those services that exceeds \$200. Issues: None.</p>
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Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

The alternative would be to not have the new CBT fee, which would entail the Board to determine a different means by which to pay for its undertaking of the administration of the CBT. This would result in the raising of fees for current regulants—CPAs and CPA firms—that would create a higher burden for individual regulants to maintain licensure, or the cutting of services that are provided for current regulants and the public. This latter step would lead to the lowering of the ability of the Board to review applicants for licensure, and since the Board is undertaking the administration of the CBT, the candidates for the CBT. Further, this lowering of the ability of the Board to serve its function to protect the public by ensuring the competence of its regulants would lead to lessening its ability to police the regulants. Since the services provided by CPAs and CPA firms have a direct impact on the economy of the Commonwealth, as well as the United States at large—witness the impact of Arthur Andersen—the Board’s lessening impact to policy such activity could lead to increasing numbers of improperly performed audits, and other services. Should the Board be required to raise fees on the CPAs and CPA firms themselves, this would increase the cost of those regulants staying in business, thus impacting the public through the increased cost of services provided to the public—making services more expensive leads to making them less accessible.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

The Board will seek comments on the notice of intended regulatory action (NOIRA), including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The Board will also seek information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so after the NOIRA has been published in the Virginia Register by mail to Nancy Taylor Feldman, Executive Director, Virginia Board of Accountancy, 3600 West Broad Street, Suite 378, Richmond, Virginia 23230, by telephone at (804) 367-8505, by email to boa@boa.virginia.gov, or by fax at (804) 367-2174; or during a public hearing to be announced at the time of publication of the NOIRA in the Virginia Register. Written comments must

include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board will use the participatory approach to develop a proposal if it receives at least 10 written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the Board use the participatory approach and interested in assisting in the development of a proposal should notify Nancy Taylor Feldman, Executive Director of the Board, by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the advisory committee will be sent to all applicants.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The amendments proposed by the Board of Accountancy will not have an impact on the institution of the family and family stability. The proposed amendments will not strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children. They will not encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse and one’s children and/or elderly parents. These amendments will not strengthen or erode the marital commitment. The effect of amendments on disposable family income will be minimal.